

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-23-496-D
)	
TYLER WELLHAUSEN, D.Ph.,)	
)	
Defendant.)	

ORDER

Before the Court is the government’s Motion for Leave to Dismiss Counts 27 and 29 Without Prejudice [Doc. No. 45].

Rule 48(a) of the Federal Rules of Criminal Procedure provides that prior to trial, “[t]he government may, with leave of Court, dismiss an indictment, information, or complaint.” FED. R. CRIM. P. 48(a). “The same rule governs the dismissal of one or more counts of an indictment.” *United States v. Delagarza*, 650 F.2d 1166, 1167 (10th Cir. 1981). “Consent of the defendant is not necessary when ... withdrawal occur[s] before the trial is begun.” *Delagarza*, 650 F.2d at 1167. “Rule 48(a) is primarily intended to protect a defendant from prosecutorial harassment ..., but it also permits courts faced with dismissal motions to consider the public interest in the fair administration of criminal justice and the need to preserve the integrity of the courts.” *United States v. Carrigan*, 778 F.2d 1454, 1463 (10th Cir. 1985) (citations omitted). Further, “[a] court is generally required to grant a prosecutor’s Rule 48(a) motion to dismiss unless dismissal is ‘clearly contrary to manifest

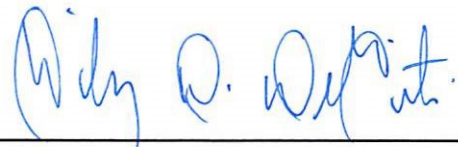
public interest.” *Carrigan*, 778 F.2d at 1463 (quoting *United States v. Cowan*, 524 F.2d 504, 513 (5th Cir. 1975)).

Upon careful consideration of the government’s motion, the Court finds that dismissal without prejudice of Counts 27 and 29 is not clearly contrary to manifest public interest. The government’s Motion for Leave to Dismiss Counts 27 and 29 Without Prejudice [Doc. No. 45] is **GRANTED** in the interest of justice.

IT IS THEREFORE ORDERED that Count 27 and Count 29 of the Indictment filed December 5, 2023 [Doc. No. 1] are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that, because the jury in this case has already been instructed that Defendant was charged with thirty counts¹, and because a copy of the Indictment will be included in the Court’s jury instructions, the parties should submit: 1) a copy of the Indictment that redacts Counts 27 and 29; and 2) proposed language explaining the redactions, if desired by counsel. The foregoing submissions should be submitted on or before December 9, 2024.

IT IS SO ORDERED this 6th day of December, 2024.



TIMOTHY D. DeGIUSTI
Chief United States District Judge

¹ The jury was selected on December 3, 2024, with the presentation of evidence to commence on December 9th. The oath for trial will be given to the jury on December 9th.